

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 BRIAN SANGSTER,

4           Plaintiff

5 v.

6 CLARK COUNTY PUBLIC DEFENDER, et  
7 al.,

8           Defendants

Case No.: 2:20-cv-00057-APG-EJY

**Order Accepting Report and  
Recommendation and Dismissing Case**

[ECF Nos. 3, 5, 8, 9, 10, 13, 14]


9           Plaintiff Brian Sangster asserts claims under 42 U.S.C. § 1983 against defendants Clark  
10 County Pubic Defender's Office, Darin Imlay, and Alexander Henry. Magistrate Judge Youchah  
11 recommended that I dismiss this case with prejudice because the defendants are defense  
12 attorneys who represented Sangster in criminal proceedings and thus are not state actors.  
13 Sangster objects, arguing that because the defendants are funded by the State, they are state  
14 actors.

15           A "public defender does not act under color of state law when performing a lawyer's  
16 traditional functions as counsel to a defendant in a criminal proceeding." *Polk Cty. v. Dodson*,  
17 454 U.S. 312, 325 (1981). Sangster alleges the defendants represented him in two criminal  
18 cases. He alleges they failed to promptly respond to his request to turn over documents, such as  
19 discovery and a presentence investigation report. The defendants thus were performing the role  
20 of attorney for Sangster and communication with the client is a traditional function within that  
21 role. The defendants therefore are not state actors under these allegations. Consequently, I  
22 accept Judge Youchah's report and recommendation and dismiss this case with prejudice  
23 because amendment would be futile.

1 I THEREFORE ORDER that Judge Youchah's report and recommendation (ECF No.  
2 **10) is accepted**, and plaintiff Brian Sangster's complaint (ECF No. 1-1) is **DISMISSED with**  
3 **prejudice.**

4 I FURTHER ORDER that all pending motions are denied as moot and the clerk of court  
5 is instructed to close this case.

6 DATED this 31st day of March, 2020.

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10 ANDREW P. GORDON  
11 UNITED STATES DISTRICT JUDGE  
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